

STATE OF MICHIGAN
COURT OF APPEALS

In re D. P. BAKER, Minor.

UNPUBLISHED

March 17, 2015

No. 322733

Macomb Circuit Court

Family Division

LC No. 2012-000315-NA

Before: DONOFRIO, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor child (born August 2012) pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions arisen and failure to rectify), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed). We affirm.

I. STATUTORY GROUNDS

A. STANDARD OF REVIEW

We review under a clear error standard. *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). “A decision is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* at 17-18 (quotation marks and citation omitted).

B. ANALYSIS

The trial court did not clearly err in finding sufficient evidence to support at least one statutory ground for terminating respondent’s parental rights. MCL 712A.19b(3), in pertinent part, provides for termination if clear and convincing evidence exists of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent entered a no contest plea to the petition in October 2012, which indicated that the minor tested positive for opiates at birth. At the time of his birth, the minor was transferred to the neonatal intensive care unit (NICU) due to his withdrawal from opiates. The petition also stated that respondent failed to notify her prescribing doctor that she was pregnant and continued to take Oxycodone and Vicodin during her pregnancy. Respondent's doctor stated that he would never have continued to prescribe the medication had he known respondent was pregnant.

During the pendency of these proceedings, respondent's substance abuse persisted. She tested positive for Oxycodone on November 15, 2012, December 28, 2012, and January 8, 2013. The trial court determined that it was no longer safe for the minor to be living with respondent, and ordered respondent to find alternate housing. Respondent missed many drug screens, refusing to test the entire summer of 2013.

On July 2, 2013, respondent gave birth to another child. Both mother and the new baby tested positive for opiates and benzodiazepines. On January 18, 2013, respondent again tested positive for amphetamines, opiates, and Oxycodone. Although respondent told the caseworker that she was admitting herself into treatment at the Sacred Heart treatment program, she was discharged from the program because of unauthorized suboxone use. Placement was rescheduled, but respondent failed to appear on the scheduled readmission date. When she finally went into treatment, she instructed her counselor not to give the caseworker any information.¹

Although respondent eventually completed Sacred Heart's two-week, inpatient treatment, she did not follow through with the aftercare recommendations to attend Narcotics Anonymous. Respondent also did not submit any drug screens after February 6, 2014. At the termination hearing, respondent claimed to have been drug free since February 2014. However, she admitted

¹ Respondent contends that her refusal to share information with the caseworker did not reflect on her ability to maintain sobriety. We disagree. Refusal to cooperate with the caseworker is indicative of respondent's lack of commitment in addressing the issue, and her unwillingness to prioritize reunification with the minor.

that she had been struggling with drug addiction. Although she admitted to buying drugs illegally from other people, she was evasive regarding the identity of these individuals. Based on the foregoing, we find no error in the trial court's conclusion that respondent's substance abuse problems had not been adequately addressed or resolved. MCL 712A.19b(3)(c)(i).

Termination of respondent's parental rights likewise was proper under MCL 712A.19b(3)(g) and (j). As noted *supra*, respondent struggled with drug addiction throughout these proceedings. When the minor at issue was born, the baby tested positive for opiates. Respondent was without stable or suitable housing. While she obtained housing in April 2013, a registered sex offender lived in the upstairs portion of the house. Respondent did not move out of this housing until April 2014, immediately preceding the termination hearing. Nor was there evidence that respondent could financially support the child as she had not obtained stable employment during the pendency of these proceedings.²

Respondent maintains that she was making progress and only needed more time to realign her life. She contends that her substantial compliance with the treatment plan was evidence of her ability to provide proper care of the minor. However, respondent's argument is divorced from the evidence presented at the termination hearing. Respondent was not substantially compliant with her treatment plan. She had not demonstrated that she was able to maintain a substance free lifestyle or that she could maintain emotional and mental stability by participating in counseling. She had not shown that she could maintain suitable housing and employment.

"This Court has held that a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). While respondent asserts that she never actually harmed the minor, she conveniently ignores that the minor was born with opiates in his system, and had to be transferred to NICU because he was experiencing withdrawal. Respondent's argument also minimizes the risk of parenting while under the influence of prescription medication, and myopically focuses on physical harm. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (the concept of "harm" in MCL 712A.19b(3)(j) does not refer only to "the potential of *physical* harm or abuse" as it may apply in instances where "the children had been, and continued to be, at risk of *emotional* harm." (Emphasis in original)).³ In summary, termination of respondent's parental right was proper under MCL 712A.19b(3)(g) and (j).

To the extent that the trial court relied on other statutory grounds, we have recognized that "[i]t is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights." *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

² At the termination hearing, respondent testified that she had secured employment, which would begin after the hearing concluded.

³ Moreover, although respondent contends that she was free from her domestically abusive relationship, she also admitted that she has done nothing to address this issue.

II. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent also challenges the trial court's best-interest analysis. We review for clear error a trial court's decision regarding a child's best interests. *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, citations, and brackets omitted).

B. ANALYSIS

The trial court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the minor child. MCL 712A.19b(5). In determining the best interests of a child, the trial court may consider the child's bond to the parent, the parent's parenting ability, the advantages of a foster home over the parent's home, and the child's need for permanency, stability, and finality. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 832 NW2d 144 (2012). "[O]nce a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

The child needed a permanent and stable environment, and respondent could not provide it. While respondent highlights evidence that she was bonded with the minor, that is but one consideration in a best-interest analysis. *In re Olive/Metts Minors*, 297 Mich App at 41-42. Respondent had not maintained a drug free lifestyle for a continual period of time. Nor had she demonstrated an ability or willingness to provide an acceptable home for the child.

Contrary to respondent's assertion on appeal, the trial court properly considered the child's placement with family. See *In re Olive/Metts Minors*, 297 Mich App at 44. The trial court noted that, on the last day of trial, the maternal grandmother requested to be the child's legal guardian although she did not wish to adopt him because of her age. The trial court astutely recognized that this was an attempt to subvert any termination ruling, and reunify the child with respondent. In fact, the maternal grandmother admitted that she wanted to become a guardian so that respondent could "re-establish her parental rights." The maternal grandmother further admitted to leaving the minor with respondent even after the court's order was for supervised parenting time.

The trial court reasonably concluded that reunification with respondent would be harmful for the minor, which the maternal grandmother seemed unwilling to accept. The evidence also suggests that caring for the minor child may be overwhelming for the maternal grandmother, given her age. The court was appropriately concerned that the maternal grandmother's love for respondent would cloud her judgment regarding the proper care for the child. We find no error in the trial court's reasoning.

III. CONCLUSION

Termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The trial court properly determined that termination was in the minor child's best interests. We affirm.

/s/ Pat M. Donofrio
/s/ Michael J. Riordan
/s/ Michael F. Gadola